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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 408

PAN-ATLANTIC STEAMSHIP CORPORATION, APPELLANT

v.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

No. 424

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 30–31) is reported in 144 F. Supp. 53.

JURISDICTION

Final judgment of the three-judge district court was entered on May 25, 1956 (R. 32). Notice of appeal in No. 408 was filed on July 25, 1956 (R. 39), and notice of appeal in No. 424 was filed on July 17,

1956 (R. 37). Probable jurisdiction was noted on November 19, 1956 (R. 44). The jurisdiction of this Court is conferred by 28 U. S. C. 1253 and 2101 (b).

QUESTION PRESENTED

Section 311 (a) of the Interstate Commerce Act provides that the Interstate Commerce Commission may, in its discretion and without hearings or other proceedings, grant temporary authority to operate as a common carrier by water between different ports of the United States, and that this temporary authority shall be valid for not more than 180 days. Section 9 (b) of the Administrative Procedure Act provides that no license granted by an agency of the federal government shall expire, if the licensee has duly applied for a renewal or a new license, until such application shall have been finally determined by the agency.

The question presented is whether the above provision of Section 9 (b) applies to temporary operating authority conferred pursuant to Section 311 (a) of the Interstate Commerce Act, and extends, or permits the Commission to extend, this temporary authority beyond 180 days.

STATUTES INVOLVED

Sections 2 and 9 of the Administrative Procedure Act of June 11, 1946, 60 Stat. 237, provide in pertinent part:

> Sec. 2. As used in this Act—
>
> (a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government

of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. * * *

* * * * *

(c) LICENSE AND LICENSING.—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. * * * [5 U. S. C. 1001]

* * * * *

SEC. 9. * * *

(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall

have been finally determined by the agency. [5 U. S. C. 1008]

Sections 302, 309, and 311 of Part III of the Interstate Commerce Act, 49 U. S. C. 902, 909, 911, added to the Act by the Transportation Act, 1940, 54 Stat. 929, provide in pertinent part:

SEC. 302. For the purposes of this part—

* * * * *

(d) The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property * * *.

* * * * *

(i) The term "interstate or foreign transportation" or " transportation in interstate or foreign commerce", as used in this part, means transportation of persons or property—

(1) wholly by water from a place in a State to a place in any other State, whether or not such transportation takes place wholly in the United States;

* * * * *

SEC. 309. (a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: * * *.

* * * * *

SEC. 311. (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting

such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier by water or a contract carrier by water, as the case may be. Such temporary authority shall be valid for such time as the Commission shall specify but not for more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

STATEMENT

On May 6, 1955, Pan-Atlantic Steamship Corporation (Pan-Atlantic), appellant in No. 408, applied to the Interstate Commerce Commission under Section 309 of the Interstate Commerce Act (*supra*, p. 4) for a certificate of public convenience and necessity to operate as a common carrier by water in transporting freight and passengers between various Pacific and Atlantic ports (Pan-Atlantic Br. 5–6). On the same day, it filed with the Commission, pursuant to Section 311 (a) of the Act (*supra*, p. 4), an application for temporary authority to operate as a common carrier between such ports (*ibid.*). On May 18, 1955, Division 4 of the Commission entered an order granting this request and, as required by Section 311 (a), granted such temporary authority only for 180 days, that is, until November 14, 1955 (R. 9–10). On October 28, 1955, Division 4 entered a further order authorizing Pan-Atlantic to perform, until final determination of its application for permanent authority, the water-carrier service temporarily authorized by the order of May 18, 1955 (R. 14–15).

Following the Commission's refusal to reconsider the October 28, 1955, order (R. 18), the appellee railroads instituted the present suit to set this order aside (R. 3–9). Both the plaintiffs and Pan-Atlantic, which had been allowed to intervene as a party defendant (R. 20), filed motions for summary judgment (R. 27–29). A three-judge district court set aside the October 28, 1955, order on the authority of *Stone's Express, Inc.* v. *United States,* 122 F. Supp. 955,[1] decided two years earlier by a three-judge district court of the same district (R. 30–31).[2] The holding in *Stone's Express* was that Section 9 (b) of the Administrative Procedure Act did not repeal or supersede the prohibition in Section 210a (b) of the Interstate Commerce Act against grant of any "temporary approval" thereunder for a period of more than 180 days.[3]

---

[1] This Court, after noting probable jurisdiction of appeals from the court's judgment in *Stone's Express*, directed vacation of the judgment in accordance with the parties' stipulations as to mootness. 350 U. S. 906.

[2] In *Stone's Express*, the court consisted of Circuit Judge Hartigan and District Judges Ford and McCarthy. In the instant case, the court was composed of Circuit Judge Magruder and District Judges Ford and Wyzanski. The two district judges stated that, had they not felt bound by *Stone's Express*, they would have concluded that, by virtue of Section 9 (b) of the Administrative Procedure Act, the order of October 28, 1955 was not beyond the authority of the Commission (R. 31).

[3] Section 210a (b), 49 U. S. C. 310a (b), provides that, pending determination of an application by a motor carrier for approval of purchase of the operating rights of another motor carrier, the Commission may grant temporary approval of the proposed acquisition "for a period not exceeding one hundred and eighty days", if it appears that injurious consequences may result from failure to grant such temporary approval.

SUMMARY OF ARGUMENT

Section 9 (b) of the Administrative Procedure Act provides that if a licensee has made timely application for "a renewal or a new license, no license" relating to activity of a continuing nature shall expire prior to final administrative action on such application. To bring under the section temporary operating authority granted, for a maximum period of 180 days, under Section 311 (a) of the Interstate Commerce Act, it is necessary to assume that the last sentence of Section 9 (b) uses the word "license" ambivalently. As appellants interpret the section, it provides that if a temporary-authority "licensee" applies for "a renewal or a new [permanent-authority] license, no [temporary-authority] license" shall expire prior to final administrative action on "such [permanent-authority] application".

The ban in Section 9 (b) against license expiration pending final administrative action on a requested renewal or new license safeguards valuable existing rights, and is not prejudicial to interested third parties, when the existing license resulted from proceedings which afforded a hearing to those adversely affected and involved an administrative determination that public convenience and necessity required grant of the license. The temporary authority granted under Section 311 (a) presents a totally different situation. The Commission may grant this authority "in its discretion and without hearings or other proceedings". Third persons have not had their day in court; any determination of the need for temporary authority is

on an *ex parte* showing; and the grantee knows that he has and can obtain only a short-term authorization.

The foregoing distinction between the area within which Section 9 (b) operates fairly and equitably and the area within which it would not so operate has particular force as applied to the statutory time limit on temporary operating authority granted under Section 311 (a). A major purpose of the statute of which that section is a part was to prevent evils deemed to result from ease of entry and over-competition in the industry. Accordingly, the statute prohibits new carrier operations except after notice to affected parties, an evidentiary hearing, administrative findings as to the public convenience and necessity of the proposed service, and court review of the administrative determination. Moreover, the Commission, when it recommended that Congress enact the predecessor and exact counterpart of Section 311 (a), recognized that abuses might arise in the exercise of the proposed power, but emphasized as an offsetting consideration the strict time limit on any authorization granted under the section. And the temporary operating authorizations which have been actually granted at least suggest that they have not been duly confined, as the statute provides, to provision of service for which there is "an immediate and urgent need", which need no other carrier is capable of meeting.

If appellants' interpretation of Section 9 (b) is accepted, the section impliedly repeals the time limitation of Section 311 (a). The interpretation does violence to two universally recognized canons of statu-

tory construction. One is that repeals by implication are not favored, and are limited to cases where there is "positive repugnancy" between the provisions of the old law and those of the new. The other is that a statute specific in its subject matter prevails over one of general application, particularly if it is a question whether the general statute repeals the special statute by implication. Here it is not only possible to construe Section 9 (b) as not impliedly repealing the time limitation of Section 311 (a), but the contrary construction of Section 9 (b) rests on a labored and dubious interpretation of its provisions.

ARGUMENT

SECTION 9 (b) OF THE ADMINISTRATIVE PROCEDURE ACT DOES NOT REPEAL OR SUPERSEDE THE 180-DAY TIME LIMITATION WRITTEN INTO THE COMMISSION'S POWER TO GRANT TEMPORARY OPERATING AUTHORITY PURSUANT TO SECTION 311(a) OF THE INTERSTATE COMMERCE ACT

INTRODUCTION

Appellants rely on the Commission's interpretation of Section 9 (b) of the Administrative Procedure Act, and invoke the familiar doctrine that an administrative agency's interpretation of its statutory authority is to be accorded great weight. The "Special Rules of Procedure" in which the Commission embodied its interpretation (Comm. Br. 34–37) go little beyond a statement of the Commission's ultimate conclusion and therefore do not have the persuasiveness of a reasoned, expounded interpretation (cf. *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140). In any

event, the courts, though respecting an administrative agency's interpretation of its statutory power, must ultimately determine the limits on that power fixed by Congress. *East Texas Lines* v. *Frozen Food Express,* 351 U. S. 49, 54. We shall therefore consider the meaning conveyed by the words of Section 9 (b), and the legislative history and substantive provisions of both this section and Section 311 (a) of the Interstate Commerce Act, to determine the intent of Congress as it bears upon the interrelationship of the two sections.

The legislative history of the two sections is discussed in Point A which follows. Under Point B, we examine from three vantage points the question whether Section 9 (b) removes the time limitation incorporated in Section 311 (a): (1) the ordinary meaning of the language of Section 9 (b); (2) the probability or improbability that Congress intended to effect the change in substantive law which would result from striking down this time limitation; and (3) the applicable canons of statutory interpretation.

A. *The Legislative History of Section 311 (a) of the Interstate Commerce Act and Section 9 (b) of the Administrative Procedure Act.*

Section 311 (a) is a part of the Water Carrier Act, enacted in 1940 as Part III of the Interstate Commerce Act (*supra,* p. 4). It is an exact counterpart of Section 210a (a) of the Interstate Commerce Act, 49 U. S. C. 310a (a), enacted in 1938 as an additional section of the Motor Carrier Act of 1935, 52 Stat. 1238. This section was among various amendments to

the Motor Carrier Act which the Interstate Commerce Commission recommended to Congress. Sen. Doc. 154, 75th Cong., 3d Sess., 2–3, 13. Appellants have quoted part of the Commission's recommendation respecting Section 210a,[4] and we quote, as significant to the issue now before this Court, the balance of the Commission's recommendation (*id.*, 2–3):

> Cases arise, and have been brought to our attention, where urgent need for interstate motor carrier service suddenly develops. The bringing in of oil wells in a new field and conditions created by a flood or other calamitous visitation are good examples, and there are others.
>
> We believe that the Commission should have power to meet such emergencies by a grant of temporary operating authority, in its discretion and without hearings or other proceedings. It is recognized that care would be necessary to protect the legitimate interests of other carriers, and that the power could be abused. However, the Commission should be capable of using the power with proper discretion, and in any event the authority granted would be strictly limited in time by the terms of the proposed amendment. The advantages to be gained, in our opinion, outweigh the possible disadvantages. The amendatory act, which we recommend and which is contained in the appendix hereto, includes provisions for such grants of temporary operating authority.

Thus, the statute not only is explicit in making 180 days the limit of a grant of "temporary" authority,

[4] Pan-Atlantic Br. 22; Comm. Br. 10–11.

but Congress acted upon the basis that an offsetting consideration to possible abuse by the Commission of the power vested in it was that any temporary authority which it might grant would be "strictly limited in time".

The Second War Powers Act lifted the 180-day limitation of Sections 210a and 311 (a) for the period March 27, 1942 to December 31, 1944 (56 Stat. 176, 187). This suspension was perhaps the least important of numerous changes in law made by that Act and was scarcely mentioned in the congressional hearings and reports.[5] This period of suspension and the termination of other provisions of the Second War Powers Act were successively extended to December 31, 1945 (58 Stat. 827), June 30, 1946 (59 Stat. 658), and March 31, 1947 (60 Stat. 345). The last extension was made by the Act of June 29, 1946, subsequent to adoption of the Administrative Procedure Act (Act of June 11, 1946, 60 Stat. 237).

With one exception referred to later (*infra*, pp. 14–15), the legislative history of the Administrative Procedure Act appears to have little present pertinence. Appellants quote statements made in the course of congressional consideration that Section 9 (b) is necessary "because of the very severe consequences of the conferring of licensing authority upon administrative agencies," and that the section is designed to "remove the threat of disastrous, arbitrary, and irremediable administrative action" and to "amelio-

[5] Statements in Executive Session on S. 2208, Senate Committee Print, Second War Powers Act, 77th Cong., 2d sess.; Sen. Rep. 989, 77th Cong. 2d sess.; House Judiciary Committee Hearings on S. 2208, 77th Cong., 2d sess.; H. Rep. 1765, 77th Cong., 2d sess.

rate the difficulties where private parties are required to secure licenses" (Comm. Br. 17–19; Pan-Atlantic Br. 26–27). These general statements, however, give no indication that Congress intended that the section should apply to, and wipe out, the time duration fixed by statute for the temporary authorizations provided for in Section 311 (a) of the Interstate Commerce Act.

The Administrative Procedure Act was designed to promote greater fairness and regularity in administrative action, but neither its language nor its legislative history discloses any purpose to favor "licensees" or any other particular group as against those with conflicting rights or interests. A major purpose of the Water Carrier Act and of the Motor Carrier Act was to prohibit new operations without first obtaining from the Interstate Commerce Commission a certificate of public convenience and necessity, to be granted only after giving those adversely affected an opportunity to be heard in opposition (*infra,* p. 16). A grant of temporary operating authority for the maximum period of 180 days was excepted from these requirements. If Section 9 (b) wipes out this time limitation, to the extent that grantees of temporary authority are benefited their competitors are prejudiced. The legislative history of Section 9 (b) shows no purpose to upset the accommodation between conflicting private interests, as made in the Water Carrier Act, and the actual provisions of Section 9 (b), point in the opposite direction. The section directs agencies to act with reasonable dispatch upon license applications, but qualifies this command by the phrase, "with

due regard to the rights or privileges of all the interested parties or adversely affected persons" (*supra*, p. 3).

B. *Section 9 (b) of the Administrative Procedure Act Does Not Apply to Temporary Authority Granted Under Section 311 (a) of the Interstate Commerce Act*

1. *The Meaning of the Words of Section 9 (b).*— This case turns on the meaning of the last sentence of Section 9 (b) of the Administrative Procedure Act:

> In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

We assume that the Act's broad definition of "license" (*supra*, p. 3) covers one who has been granted temporary authority under Section 311 (a) of the Interstate Commerce Act and that the grantee of such authority is a "licensee" within the meaning of Section 9 (b).

To come within the section, the licensee must have made timely and sufficient application for "a renewal or a new license." The word "renewal" necessarily relates to a license already held. In the context, the words "new license" would seem limited to a license of the same type or class as that already held. Certainly, the Ohio statute, declared by the Senate Judiciary Committee to be a "similar provision" (Sen. Doc. 248, 79th Cong., 2d sess., p. 35), expressly

so provides.[6] If this is the section's meaning, there was no "renewal" or "new license" which the Commission was empowered to grant to Pan-Atlantic, which had already been granted temporary authority for the maximum statutory period.

The section provides that if there has been a proper application for a renewal or a new license, "no license" with reference to an activity of a continuing nature shall expire prior to final determination of "such application". Appellants interpret this as meaning that "no [temporary authority] license" shall expire until the licensee's application for a "new [permanent authority] license" has been finally determined. In other words, the word "license" is used in the sentence in two different senses, first, as referring to a temporary-authority license and, second, as referring to a permanent-authority license. We set forth below the sentence as construed by appellants:

> In any case in which the [temporary authority] licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new [permanent authority] license, no [temporary authority] license with reference to any activity of a continuing nature shall expire until such application [for perma-

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[6] The Ohio statute provided (Pan-Atlantic Br. 6a–7a):

"No licensee shall be required to discontinue the operation of a business or profession because of the failure of an agency to accept or reject said licensee's application for a *new license of the same type or class, or renewal of an existing license*, or application for registration, prior to the expiration of the license held by said licensee at the time said application was made where said application was filed with the agency within the time and in the manner provided by statute or rule of the agency. [Emphasis supplied.]"

> nent authority] shall have been finally determined by the agency.

We regard this interpretation of the section as highly artificial and improbable. The change in the Interstate Commerce Act which the construction would effect, considered below, constitutes in our view a further and decisive ground for rejecting appellants' interpretation of Section 9 (b).

2. *The Consequences of Appellants' Construction of the Section.*—A major purpose of the Motor Carrier Act, on which the Water Carrier Act was patterned, was to guard against the instability and other evils believed to result from ease of entry into the industry and over-competition. In *American Trucking Associations* v. *United States,* 344 U. S. 298, 312–313, this Court said:

> Then the industry was unstable economically, dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility. So Congress felt compelled to require authorization for all interstate operations to preserve the motor transportation system from over-competition, while at the same time protecting existing routes through the "grandfather" clause.

The relief or cure provided by Congress was to prohibit new carrier operations except under the following terms and conditions: application to the Commission under oath, accompanied by proof of service on interested parties; the making of certain findings

by the Commission, including a finding that the proposed service is or will be required by present or future convenience or necessity; and specification of the service to be provided, the routes to be operated and their termini.[7] Not a vestige of these safeguards is applicable to grants of temporary authority under Sections 210a (a) and 311 (a) of the Act, which provide that the Commission may grant such authority "in its discretion and without hearings or other proceedings".

In the case of licenses which can be granted only after hearings, consideration of the evidence, arguments of opposing parties, and administrative determination that the statutory criteria for a license issuance have been met, Section 9 (b), insofar as it keeps the existing license alive pending determination of a timely application for a renewal or new license, protects valuable existing rights and avoids possible injury resulting from administrative delay, without prejudicing rights of others.[8] But there are no like elements of fairness or equity in applying Section 9 (b) to temporary authority conferred pursuant to Section 311 (a) of the Interstate Commerce Act. There the original grant is on an *ex parte* showing and without any finding that statutory conditions for grant of permanent authority have been met, and the grantee knows that he is obtaining and can obtain operating

[7] Motor Carrier Act, 49 U. S. C. 306–308; Water Carrier Act, 49 U. S. C. 909.

[8] Licenses for operation of broadcasting stations, which cannot be granted "for a longer term than three years" (Sec. 307 (d) of Communications Act of 1934, 47 U. S. C. 307 (d)), are an instance of such application of Section 9 (b).

rights of only limited duration. Application of Section 9 (b) in this situation, so as to convert such temporary rights into rights continuing until the grantee's application for permanent authority has been finally determined by the Commission, operates to deprive competitors and other affected parties of the scrutiny and screening provided for in the Commerce Act with respect to the undertaking of new carrier operations.

Section 311 (a) provides that temporary authority is to be granted only to enable provision of service for which there is "an immediate and urgent need" and within territory having no carrier service "capable of meeting such need" (*supra*, pp. 4–5). If in fact there exists "immediate and urgent" need for service which no other carrier is capable of providing, 180 days would seem sufficient time for final administrative determination of the question whether the service is required by public convenience and necessity. Yet it appears that about 19% of all temporary authorizations granted during a five-year period under Sections 210a (a) and 311 (a) have been extended beyond 180 days (Comm. Br. 29).[9] It is difficult to reconcile requiring more than 180 days to determine the permanent-authority application if in each and every case the service in question was urgently and immediately

[9] Of course, many temporary authorizations are to meet emergencies of a passing nature (Pan-Atlantic Br. 32) and are for less than 180 days and are not accompanied or followed by application for permanent authority. Since these authorizations are included in the figures on which the 19% of extensions are based, 19% is an understatement of the percentage of those "temporary" authorizations involving continuing service which have been extended beyond 180 days.

needed and not rendered by any other carrier. The explanation would seem to be either that the facts submitted on *ex parte* applications for temporary operating authority are frequently not representative of the actual situation or that the Commission in its *ad hoc* rulings on these applications is very lenient in its interpretation of what satisfies the statutory conditions for grant of temporary authority. The facts, whatever the explanation, point up the importance of the 180-day limitation as a curb on "abuse" of the unreviewed and unreviewable power conferred by Sections 210a and 311 (a), which curb was called to the attention of Congress when the Commission proposed that Section 210a be enacted (*supra*, p. 11).

3. *Applicable Canons of Statutory Interpretation.*— This Court, citing earlier decisions of the Court, has said (*United States* v. *Jackson*, 302 U. S. 628, 631):

> Repeals by implication are not favored. A law is not to be construed as impliedly repealing a prior law unless no other reasonable construction can be applied.

That repeals by implication are not favored is a "cardinal principle of construction", and in order to conclude that there has been such a repeal there must be "a positive repugnancy between the provisions of the new law, and those of the old * * *." *United States* v. *Borden Co.*, 308 U. S. 188, 198–199.

Appellants have suggested that application of Section 9 (b) of the Administrative Procedure Act to temporary authority granted under Section 311 (a) of the Interstate Commerce Act does not repeal the 180-day limit incorporated in the latter section (Pan-

Atlantic Br. 27–28, 32–33; Comm. Br. 21, 27). The contention is that Section 311 (a) still prohibits the Commission from granting temporary authority for more than 180 days, but that Section 9 (b) automatically, and by its own force, extends the temporary authority beyond 180 days. But the Water Carrier Act prohibits new common carrier transportation by water except as authorized by Section 311 (a), which fixes 180 days as the limit of temporary authority which may be conferred. If Section 9 (b) automatically extends such authority whenever there has been a timely application for permanent authority, it wipes out the Section 311 (a) time limitation.[10]

When the Administrative Procedure Act was passed on June 11, 1946, the 180-day limitation of Section 311 (a) was to become operative again on June 30, 1946 (*supra*, p. 12). Section 9 (b) was to take effect three months after the statute's enactment (5 U. S. C. 1011). Thus, if appellants' interpretation of Section 9 (b) is accepted, it superseded as of September 11, 1946, the 180-day limitation of Section 311 (a). The general rule against repeal by implication

[10] The Commission's "Special Rules of Procedure" provide that if the grant of temporary authority was for less than 180 days, the activity authorized "is presumed not to be of a 'continuing nature' unless the Commission otherwise expressly determines". 49 C. F. R. 2.2 (e), Comm. Br. 36. The converse is that temporary authority granted for 180 days is presumed to involve activity of a "continuing nature" and is thus given automatic extension by Section 9 (b) if there has been timely application for permanent authority. In short, the Commission interprets 9 (b) as striking down the 180-day limitation except in grants of temporary authority which are for less than 180 days and therefore do not involve the 180-day limitation.

is reenforced by the fact that Congress, after passing the Administrative Procedure Act, extended the suspension of the 180-day limitation of Section 311 (a) from June 30, 1946, to March 31, 1947 (*supra*, p. 12)—an extension which was an empty gesture if Section 9 (b) operated to eliminate the 180-day limitation as of September 11, 1946.

The doctrine that repeals by implication are not favored has particular application where the later statute uses terms of general scope and the earlier one is a "special" statute dealing in precise terms with a specific subject. There is no doubt that this is the situation here. Section 9 (b) of the Administrative Procedure Act covers any "permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission" granted by any administrative agency of the United States Government. In contrast, Section 311 (a) of the Interstate Commerce Act, like its counterpart Section 210a, is of defined and precise scope, namely, grant of temporary authority to provide service as a common or contract carrier by water.

The rule of construction to which we have referred was stated as follows in *Rodgers* v. *United States*, 185 U. S. 83, 87–88:

> It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided

> for in the special—the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.

See, to the same effect, *Washington* v. *Miller,* 235 U. S. 422, 428.[11]

We submit that there is occasion here to apply the settled rule that a statute is to be interpreted, if possible, as not impliedly repealing a prior statute, particularly when it is a question of a general statute repealing provisions of a special statute. Not only is it possible to construe Section 9 (b) as not effecting such a repeal, but in our view the contrary construction is highly dubious (*supra,* pp. 14–16).

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[11] See, also, 2 Sutherland, *Statutory Construction*, 3d ed., Sec. 5204: "General and special acts may be *in pari materia.* If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling."

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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MARCH 1957.